

ADMINISTRATIVE APPEAL PROCESS (AAP)
AFTER PERFORMING AN A-76 COST COMPARISON

This guidance is in accordance with OMB Circular A-76, *Performance of Commercial Activities*, Revised Supplemental Handbook (Part 1, Chapter 1, Paragraph K) and replaces DoD Instruction 4100.33, *Commercial Activities Program Procedures*, September 9, 1985 (Paragraph E.3.g.).

The AAP shall be an independent and objective process that applies to cost comparisons performed in accordance with OMB Circular A-76 and its Revised Supplemental Handbook. The purpose of the AAP is to correct errors identified through a formal appeal (filed by an eligible appellant) after determining a tentative cost comparison decision. The AAP Authority shall only review items formally challenged by an eligible appellant and may not review any other items. No final A-76 cost comparison decision may be determined until all appeals are resolved. Appeals are part of the deliberative process and, therefore, are not to be released to other parties (i.e., affected or not affected) until the AAP is completed and a final A-76 cost comparison decision is made. When there is a reversal of the tentative A-76 cost comparison decision, no subsequent or sequential appeal shall be permitted. The attached diagram provides an overview of the AAP for A-76 cost comparisons. **(NOTE: The Administrative Appeal Process for waivers to the cost comparison process is outlined in the DoD Interim Guidance on Waivers to the A-76 Cost Comparison Process at Attachment 6.)**

General Accounting Office (GAO) protests are not part of the AAP and a decision to award a contract in the event of a GAO protest is determined by the contracting officer in accordance with FAR Part 33. Additionally, the AAP does not authorize an appeal outside DoD or judicial review. The AAP is a separate and distinct process from the processes outlined at FAR Part 33, Protests, Disputes and Appeals.

1. **Eligible Appellants** are the affected in-house employees (i.e., appropriated or non-appropriated fund civilian employees being cost compared whose work is being competed) or their representative(s), contractors who have submitted formal offers, and an agency that has submitted a formal offer via an interservice support agreement (ISSA) that could be affected by the tentative cost comparison decision to convert to or from in-house, contract, or ISSA performance as a result of the cost comparison. A non-selected contractor is permitted to appeal in case the contractor originally selected to compete against the in-house offer is reversed via a GAO protest.

2. **Submission of Appeals** shall be permitted only during the Public Review Period. Appeals shall be submitted to the contracting officer and be focused on correcting any and all discrepancies, errors, or omissions to ensure the A-76 cost comparison reflects the correct outcome regardless of whether the final decision is in favor of the contract/ISSA or in-house offer (see paragraph 6. for Appeal Criteria). The outcome of the AAP is final and no subsequent appeals or reviews are authorized under the Revised Supplemental Handbook procedures. Appeals shall be received by the contracting officer, in writing, no later than the last day of the Public Review Period. The Public Review Period shall begin on the date all supporting documentation* is made publicly available and ends within 20 calendar days. However, if the A-76 cost comparison process for a specific initiative is particularly complex, the contracting officer may extend the Public Review Period to a maximum of 30 calendar days.

3. AAP Decision Time Constraints. The AAP Authority should issue the AAP decision within 30 calendar days from receipt of the appeal from an appellant by the AAP Authority. This provides sufficient time for all appeals to be evaluated in order to determine a final A-76 cost comparison decision within 30 calendar days. In complex cases, the contracting officer may grant extensions to the AAP.

4. AAP Authority. An AAP Authority shall be appointed who is either (1) at least two organizational levels above the official who certifies the MEO or (2) independent of the function(s) being cost compared (e.g., if refuse collection is being cost compared, the AAP Authority may not be from the public works/civil engineering function). The following personnel shall be ineligible to be the AAP Authority (or serve on an AAP board if one is appointed):

(a) Anyone participating in the A-76 cost comparison process, such as the contracting officer, Source Selection Authority, members of the Source Selection Evaluation Board, individuals developing the Management Plan (including in-house cost estimate), etc.

(b) Anyone directly working in or associated with the function being cost compared, such as spouses, children, parents, siblings, or household members working in the function being cost compared.

(c) Anyone working for the organization having direct jurisdiction or control over the function being cost compared.

This appointment should be made early in the A-76 cost comparison process to ensure the AAP Authority is independent of the entire A-76 cost comparison process in case an appeal is received. As soon as an appeal is received, the AAP Authority shall be provided a copy of the appeal, cost comparison form, solicitation package, management plan and all supporting documentation*.

5. AAP Process. The AAP Authority shall process appeals as follows:

(a) Ensure the contracting officer acknowledges to the appellant in writing that the appeal has been received.

(b) Resolve questions from affected parties relating to determinations resulting from the A-76 cost comparison. Personnel involved in the A-76 cost comparison process may not be part of the AAP but may provide information, data or explanations regarding the basis for determinations or decisions made during the A-76 cost comparison process. The AAP Authority shall analyze each element of the appeal to make a determination. The AAP Authority may appoint an AAP Board to assist in the analysis; however, the AAP Authority shall make all AAP decisions. The AAP should solicit assistance from anyone necessary in evaluating the appeal(s), e.g., legal advisor experienced in the procurement process. The AAP Authority shall only review items specifically identified in an appeal; therefore, the AAP Authority may not make any changes to the cost comparison form unless identified in an appeal. The AAP Authority shall validate discrepancies identified in the appeal and shall ensure the appropriate changes are made to the cost comparison form. The AAP Authority shall ensure a complete audit trail (with rationale) is maintained to document all corrections.

(c) Provide to the contracting officer the results of the appeal decision in writing with an explanation of why the appeal is sustained, does not meet the appeal criteria or why the appeal is denied. The contracting officer shall provide a copy of the written decision to the appellant.

(d) Provide other affected parties a copy of this decision upon request. Other interested parties may request a copy under the Freedom of Information Act (FOIA).

6. Appeal Criteria.

(a) In accordance with the Revised Supplemental Handbook, Part I, Chapter 3, Paragraph K., appealable items shall be limited to:

- (1) Address specific questions regarding line items on the cost comparison form and set forth rationale for questioning the items.
- (2) Identify specific instances of Government denials of information not otherwise protected by law or regulation.
- (3) Address specific questions regarding compliance with the policies and procedures of OMB Circular A-76 and the Revised Supplemental Handbook.

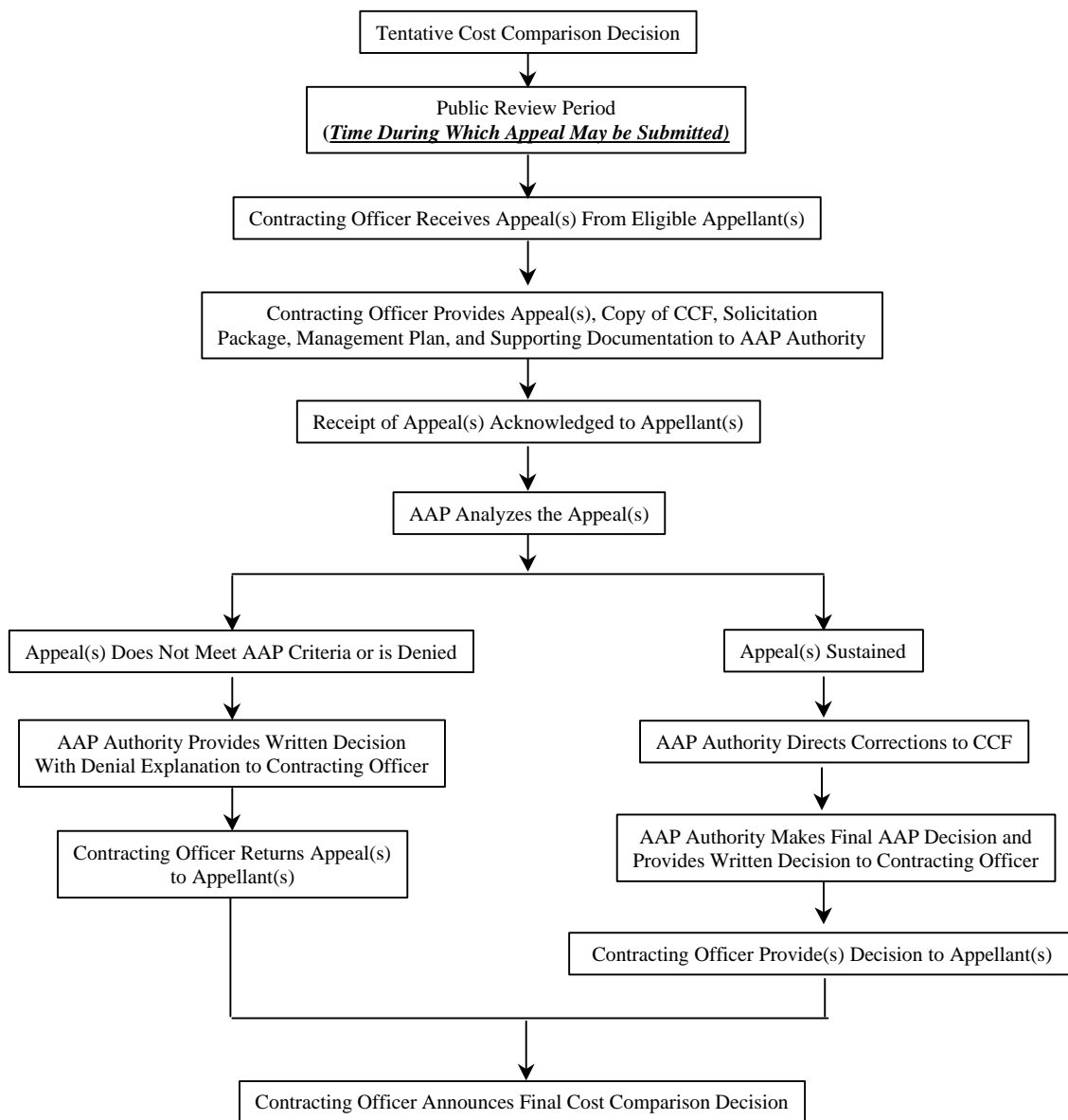
(b) Non-appealable items as listed in the Revised Supplemental Handbook are:

- (1) Selection of one contractor over another for competition with the in-house cost estimate.
- (2) Award to one contractor in preference to another.
- (3) Government management decisions involving the certified Most Efficient Organization (MEO).
- (4) Policies/procedures in OMB Circular A-76 and the Revised Supplemental Handbook.

7. AAP Final Decision. The decision of the Administrative Appeal Authority shall be final and may not be overruled by a higher authority, e.g., commander, director. The AAP does not authorize an appeal outside the agency or judicial review. No further appeals or reviews shall be considered even if the AAP results in reversing the initial tentative A-76 cost comparison decision. After providing the commander or director and appellant(s) with a final AAP decision, appropriate public notifications shall be made. The AAP Authority shall then file an AAP After-Action Report with the command that is maintained as part of the official A-76 cost comparison documentation.

*** Supporting documentation shall not include any proprietary information from a contractor's offer.**

**Overview of Administrative Appeal Process
for the A-76 Cost Comparison Process**



Note: After AAP Makes Final Cost Comparison Decision No Subsequent Appeal(s) Are Allowed Even if Original Tentative Cost Comparison Decision is Overturned

THIS DIAGRAM IS AN OVERVIEW--IT IS NOT ALL-INCLUSIVE OF THE ADMINISTRATIVE APPEAL PROCESS